

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER: 05-0035**  
**Sales and Use Tax**  
**For the Tax Period 2001-2003**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

**I. Sales Tax–Projection**

**Authority:** IC 6-8.1-5-1(b), IC 6-8.1-4-2.

The taxpayer protests the sales projection for the 2003 tax year.

**II. Sales Tax-Workshops and Seminars**

**Authority:** I.C. 6-2.5-2-1(a), IC 6-2.5-4-1(b), IC 6-2.5-4.

The taxpayer protests the assessment of sales tax on receipts for the provision of workshops and seminars.

**III. Sales Tax-Sales to Exempt Organizations**

**Authority:** IC 6-2.5-2-1(a), IC 6-2.5-8-8, 45 IAC 2.2-8-12

The taxpayer protests the assessment of sales tax on equipment sold to exempt organizations.

**IV. Sales Tax-Calculation of Sales Tax**

**Authority:** IC 6-2.5-2-2, IC 6-2.5-2-5(a).

The taxpayer protests the method of calculating sales tax in some situations.

**V. Use Tax-Imposition**

**Authority:** IC 6-2.5-3-2 (a).

The taxpayer protests a portion of the imposition of the use tax.

## **STATEMENT OF FACTS**

The taxpayer was a corporation that conducted various workshops and seminars. It also sold and serviced computer systems. There were two principals in the corporation. One principal handled the financial affairs of the corporation and handled the sales and servicing of computers. The other principal conducted the workshops and seminars. After a routine audit, the Indiana Department of Revenue (department) assessed additional sales and use tax, interest, and penalty against the taxpayer for the years 2001-2003. When the taxpayer corporation was dissolved in 2004, the audit assessments were still unsatisfied. The former vice president protested the sales tax assessments. He agreed that he was responsible for the remittance of the sales taxes but protested the amount of the sales taxes due. A hearing was held with the vice president and this Letter of Findings results.

### **I. Sales Tax –Projection**

#### **Discussion**

At the time of the audit, the taxpayer did not produce adequate documentation for the auditor to review and determine the appropriate sales tax liability for the tax year 2003. Therefore, the department's auditor projected taxable sales by taking the sales from 2001 and 2002 and divided them by the year's gross receipts to determine the taxable amount. These percentages were averaged to arrive at 18.04 per cent. This percentage was then applied to the gross receipts for 2003 to determine the sales tax due for 2003. The taxpayer never signed the projection agreement.

The taxpayer protested the use of this projection to determine the 2003 sales tax liability. The taxpayer contended that the corporation's business practices changed dramatically at the end of 2002 when the principal, who specialized in computer sales and service, left the corporation. After that time very few sales of computer equipment were made. Rather the taxpayer corporation's receipts came almost entirely from the training seminars it conducted. The taxpayer also provided financial documentation to substantiate its contentions concerning the source of the corporation's 2003 income.

All tax assessments are presumed to be accurate. The taxpayer bears the burden of proving that any assessment is incorrect. IC 6-8.1-5-1 (b). The department has the authority to use methods considered necessary to determine a taxpayer's proper tax liability. IC 6-8.1-4-2. One of the methods often and appropriately used when taxpayers do not provide adequate records of their transactions to allow the audit division to review them and determine the proper liability based upon those records is the projection method as was done in this case. However, the taxpayer has produced substantial evidence indicating that the projection agreement, which the taxpayer never agreed to, did not properly reflect the corporation's actual sales tax liability. The documentation presented by the taxpayer at the hearing allows the department to determine the proper tax liability based upon the actual sales.

#### **Finding**

The taxpayer's protest to the use of the projection method to determine the 2003 sales tax liability is sustained. The proper liability is to be determined in a supplemental audit using the financial documentation provided at the hearing.

## **II. Sales Tax-Workshops and Seminars**

### **Discussion**

The taxpayer conducted workshops and seminars. These conferences were on subjects such as human services and not-for-profit corporate operations. Some of these seminars were designed to qualify participants for continuing education credits. The seminars typically consisted of speakers, small group workshops, training, networking, and distribution of printed materials.

I.C. 6-2.5-2-1(a) imposes sales tax on retail transactions made in Indiana. Transactions where a merchant in the ordinary course of his business sells tangible personal property to a customer are subject to the sales tax. IC 6-2.5-4-1(b). There is no sales tax imposed on services unless the provision of the service is specifically defined by statute as taxable in IC 6-2.5-4.

The taxpayer's workshops and seminars constitute the provision of services not subject to the sales tax.

### **Finding**

The taxpayer's protest to the imposition of sales tax on receipts from the provision of workshops and seminars is sustained.

## **III. Sales Tax-Sales to Exempt Organizations**

### **Discussion**

During the first two years of the audit, the sales of computers and computer equipment constituted a major portion of the corporation's business. Generally the sale of computers and computer equipment in the regular course of a taxpayer's business is subject to sales tax. IC 6-2.5-2-1(a). There are, however, certain statutory exemptions from the sales tax. The taxpayer contends that many of its sales fell into one of the statutory exemptions from sales tax because the purchasers were not-for-profit organizations.

IC 6-2.5-8-8 provides for exemption certificates from sales tax in pertinent part as follows:

- (a) A person, authorized under subsection (b), who makes a purchase in a transaction which is exempt from the state gross retail and use taxes, may issue an exemption certificate to the seller instead of paying the tax. The person shall issue the certificate on forms and in the manner prescribed by the department. A seller accepting a proper exemption certificate under this section has no duty to collect or remit the state gross retail or use tax on that purchase.

45 IAC 2.2-8-12(d) clarifies the law concerning exemption certificates in pertinent part as follows:

Unless the seller receives a properly completed exemption certificate the merchant must prove that sales tax was collected and remitted to the state or that the purchaser actually used the item for an exempt purpose. It is, therefore, very important to the seller to obtain an exemption certificate in order to avoid the necessity for such proof.

Pursuant to the statute and explanatory regulation, the production of a valid exemption certificate exempts the merchant from the duty of collecting and remitting sales tax. Without a valid exemption certificate, the burden shifts back to the merchant to prove that the sales were not actually subject to sales tax. The taxpayer provided valid exemption certificates for many of the sales upon which the department assessed sales tax. The taxpayer had no duty to collect and remit sales tax on these leases.

The taxpayer had several customers who did not provide valid exemption certificates. Therefore, the taxpayer has the burden of proving that the sales to these customers were exempt from the sales tax. The taxpayer did not provide adequate documentation to sustain this burden.

### **Finding**

The taxpayer's protest to the imposition of sales tax on sales made to the organizations that provided exemption certificates is sustained. The remainder of the taxpayer's protest is denied.

## **IV. Sales Tax-Calculation of Sales Tax**

### **Discussion**

The department assessed sales tax on the book entries of the amount of income collected on sales of computers and computer parts. The taxpayer alleged that in many instances, sales tax was actually collected from the purchasers and not remitted to the state. In those cases, assessing tax on the total receipts from the sale would actually be assessing sales tax on the sales tax collected rather than just on the sale price of the product.

The sales tax is to be imposed on the gross retail income received by the merchant in the sale of tangible personal property. IC 6-2.5-2-2.

"Gross retail income" is defined at IC 6-2.5-2-5(a) as follows:

"[G]ross retail income" means the total gross receipts, of any kind or character, received in a retail transaction, including cash, credit, property, and services, for which tangible personal property is sold, leased, or rented, valued in money, whether received in money or otherwise,

Sales taxes collected from customers are not part of the gross receipts for the computers and computer equipment. The amount collected for sales tax cannot be included in the total price of the product.

The taxpayer produced invoices indicating that sales tax was collected on many of the sales, thus sustaining its burden of proving that the department in some instances incorrectly assessed sales tax on sales taxes collected from customers.

### **Finding**

The taxpayer's protest to the sales tax charged on sales taxes collected from customers is sustained subject to audit verification.

## **V. Use Tax-Imposition**

### **Discussion**

Indiana imposes an excise tax on tangible personal property stored, used, or consumed in Indiana. IC 6-2.5-3-2 (a). The taxpayer protested a portion of the use tax imposed. The taxpayer contended that one invoice on which use tax was imposed was actually for a loan rather than the purchase of tangible personal property to be used by the business. The taxpayer did not provide any documentation to substantiate this claim. The taxpayer did not sustain its burden of proving that the use tax was improperly imposed.

### **Finding**

The taxpayer's protest is denied.